

AGREEMENT FOR SERVICES
BETWEEN
CITY OF SUNNYVALE
AND
DAVID E. KAHN

This Agreement for Services, dated May __, 2005, is between the City Council of the City of Sunnyvale ("City") and David E. Kahn ("City Attorney") for services to be performed by City Attorney in the position of City Attorney of the City of Sunnyvale.

In consideration of the mutual promises contained herein, the parties agree as follows:

Section 1. Duties

The City Attorney shall perform the functions and duties specified in Section 908 of the Charter of the City of Sunnyvale, the Sunnyvale Municipal Code, and other legally permissible and proper duties and functions as the City shall from time to time assign. During the period of the City Attorney's employment as City Attorney, the City Attorney shall devote his best efforts to the performance of his duties, and shall not be employed in any other capacity while employed as City Attorney, without the express prior written consent of the City Council.

Section 2. Term

A. The provision of services by the City Attorney will commence on Monday, May 23, 2005. The term of this Agreement shall be indefinite, subject to the termination, resignation and severance provisions of this Agreement.

B. Nothing in this document shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the City Attorney at any time, subject to the provisions of Section 3.

C. Nothing in this document shall prevent, limit or otherwise interfere with the City Attorney's right to resign at any time from his position with City, subject to the provisions of Section 3.

Section 3. Termination

A. Because an intimate and confidential relationship is necessary between City and City Attorney, the City Attorney serves at the pleasure of the City Council, and nothing herein shall be taken to prevent, limit, or otherwise interfere with the right of the City Council to terminate the service of City Attorney with or without cause. However, the City Council shall take no action to terminate the services of the City Attorney within ninety (90) days after any election at

which one or more new members are elected to the City Council. There is no express or implied promise made to the City Attorney for any form of continued employment. The City Attorney shall have no right to a termination hearing. The City and the City Attorney acknowledge that an excellent City-City Attorney relationship is in the best interest of the City, and accordingly agree to use their best efforts for foster City-City Attorney communications. This Agreement is the sole and exclusive basis for an employment relationship between City Attorney and the City Council.

B. If the City Attorney is terminated by the City Council while the City Attorney is still willing and able to perform the duties of the City Attorney, the City Council agrees to pay the City Attorney a single lump sum payment, made on the effective day of the termination, of an amount equivalent to six months aggregate salary and an amount equivalent to six months aggregate medical insurance benefit allowance. Any such payments will release the City Council from any further obligations under this Agreement. Contemporaneously with the delivery of the separation pay herein above set out, the City Attorney agrees to execute and deliver to City a release releasing the City from liability for all claims that the City Attorney may have against the City, except those claims prohibited from such a release under either California or federal law..

C. Notwithstanding paragraph 3(B) above, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph 3(B), if the City Attorney is terminated because of the conviction of or a plea of nolo contendere to a crime, an offense of moral turpitude, a violation of statute or law constituting misconduct in office, or for willful misconduct. Further, City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph 3(B), in the event the City Attorney voluntarily resigns in writing prior to without affirmative action by the City to terminate, initiate termination proceedings or request the City Attorney's resignation (e.g., the City Attorney's resignation to pursue other employment or professional opportunities).

D. In the event that the City Attorney, voluntarily and without the official request of the City resigns his position before the expiration of the term of this Agreement, the City Attorney shall provide written notice to the City at least two (2) months in advance of the City Attorney's final date of employment, unless the parties agree otherwise. Such resignation shall not be deemed a "termination" which triggers the requirement of the lump sum payments in Paragraph 3.B., above.

Section 4. Salary

A. The City Attorney's starting salary shall be one hundred seventy-eight thousand dollars (\$178,000.00) per annum.

B. The City Attorney's compensation shall be evaluated on an annual basis. This evaluation will include consideration of both merit increases and "across-the-board" increases provided to management employees. The annual base salary may be increased by written agreement of the parties or by inclusion of the agreed salary amount in any duly adopted ordinance or resolution

F. The City agrees that the City Attorney may take a leave of absence without pay for 34 consecutive calendar days beginning on or after November 15, 2005, for a prescheduled family commitment, on the condition that the City Attorney agrees to be available to the City, if needed, within one business day via e-mail or telephone during this leave.

Section 6. Performance Evaluation

The City Council shall review and evaluate the performance of the City Attorney before May 30 of each year if possible. However, the City Council will make a good-faith effort to complete the City Attorney's first evaluation within 30 days of the six-month anniversary of the City Attorney's first date of employment with the City. Such review and evaluation shall be in accordance with the specific criteria developed by the City Council in consultation with the Director of Human Resources and City Attorney. The City Council shall provide the City Attorney with their written comments and/or discuss the review with the City Attorney, at the discretion of the City Council. The City Attorney will be responsible to the City for providing annual written or e-mail notice to the City of the need to complete the evaluation, and for the scheduling of any meetings at a mutually agreeable time. The City Attorney shall have the right to respond orally or in writing to the evaluation.

Section 7. Indemnification

The City Council shall defend, hold harmless, and indemnify the City Attorney against any tort, professional liability claim, or demand, or civil rights or other legal action, arising out of any act, event or omission occurring in the performance of the City Attorney's professional duties as City Attorney, except to the extent that City Attorney's actions are the result of reckless negligence, willful misconduct, or criminal actions. The City Council will defend, compromise or settle any such claim or suit, as appropriate, and pay the amount of any settlement or judgment rendered thereon. This indemnification shall extend beyond termination of employment or other expiration of this Agreement, to provide full and complete protection to the City Attorney for acts undertaken or committed by the City Attorney in his capacity as City Attorney, regardless of whether receipt of notice or filing of any claim or lawsuit occurs during or following the City Attorney's employment with the City. The extent of defense or indemnification may be limited by the provisions of California State law.

Section 8. Bonding

The City shall bear the full cost of any fidelity or other bonds required of the City Attorney under any law or ordinance.

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The signatures of the parties below indicated that each has read and understood the Agreement and will abide by the terms stated herein.

This Agreement has been executed by the parties on the dates noted.

CITY OF SUNNYVALE
CITY COUNCIL

Dean J. Chu, Mayor

Date: _____

Ron Swegles, Vice Mayor

Date: _____

Otto O. Lee, Councilmember

Date: _____

John N. Howe, Councilmember

Date: _____

Julia E. Miller, Councilmember

Date: _____

Fred M. Fowler, Councilmember

Date: _____

Melinda Hamilton, Councilmember

Date: _____

David E. Kahn, City Attorney

Date: _____